

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Feb 07, 2023

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,

-vs-

CARLOS ARMANDO SALDANA,
Defendant.

No. 4:17-CR-6013-WFN-1

ORDER DENYING MOTION TO
REDUCE SENTENCE

Pending before the Court is Carlos Saldana's *pro se* Motion to Reduce Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A)(i). ECF No. 97. Mr. Saldana argues there are extraordinary and compelling reasons to reduce his sentence of imprisonment to time served because he has hyperthyroidism and hypertension, which make him more susceptible to COVID-19. The Court denies the Motion because Mr. Saldana has not shown extraordinary and compelling reasons to reduce his sentence, and because the § 3553(a) factors weigh against early release.

BACKGROUND

Mr. Saldana pled guilty to distributing fifty grams or more of pure methamphetamine in violation of 21 U.S.C. §§ 841(a) and 841(b)(1)(A)(viii). ECF No. 92. at 1. He was sentenced to the statutory minimum of ten years imprisonment. *Id.* at 2.

DISCUSSION

The Court may reduce a sentence under 18 U.S.C. § 3582(c)(1)(A)(i) if (1) there are "extraordinary and compelling reasons" to do so, and (2) the reduction is appropriate considering the factors set forth in 18 U.S.C. § 3553(a). 18 U.S.C. § 3582(c)(1)(A); *United*

ORDER

1 *States v. Wright*, 46 F.4th 938, 945 (9th Cir. 2022).¹ Prisoners must satisfy both conditions
 2 to obtain compassionate release. *Wright*, 46 F.4th at 945. If either condition is not met,
 3 compassionate release must be denied. *Id.*²

4 Before moving for compassionate release, a prisoner must first exhaust their
 5 administrative remedies by asking the Bureau of Prisons [BOP] to move for compassionate
 6 release on their behalf. § 3582(c)(1)(A); *United States v. Keller*, 2 F.4th 1278, 1281 (9th Cir.
 7 2021). Once thirty days have lapsed from the warden's receipt of the prisoner's request, the
 8 prisoner has satisfied the exhaustion requirement. *Keller*, 2 F.4th at 1281. Even if the Court
 9 denies a motion for compassionate release on other grounds, it must address exhaustion if
 10 the Government properly raises the issue. *Id.*

11 **I. Mr. Saldana satisfied the exhaustion requirement.**

12 Mr. Saldana satisfied the exhaustion requirement by submitting his request for
 13 compassionate release to the warden more than thirty days before filing the instant Motion.
 14 *Compare* ECF No. 107 at 2, *with* ECF No. 97. The Government notes that Mr. Saldana did
 15 not appeal the warden's decision denying his request. ECF No. 103 at 4. But Mr. Saldana

17 ¹ "Any reduction must [also] be consistent with applicable policy statements issued
 18 by the Sentencing Commission." *Dillon v. United States*, 560 U.S. 817, 821 (2010).
 19 However, because the Sentencing Commission has not amended the Sentencing Guidelines
 20 since Congress amended 18 U.S.C. § 3582(c)(1)(A) to allow prisoners to petition for
 21 compassionate release directly, there *are no* applicable policy statements issued by the
 22 Sentencing Commission. *See United States v. Aruda*, 993 F.3d 797, 802 (9th Cir. 2021).

23 ² Defendants may also qualify for compassionate release if they are at least 70 years
 24 old, have served at least 30 years of their sentence, the Director of the BOP has determined
 25 they are not a danger to any person or the community, and the § 3553(a) factors weigh in
 26 favor of reduction. 18 U.S.C. § 3582(c)(1)(A). Because Mr. Saldana is less than 70 years
 27 old, this route is unavailable, and he must demonstrate extraordinary and compelling reasons
 28 for reducing his sentence. *See id.*

1 was not required to do so. *See* 18 U.S.C. § 3582(c)(1)(A). He was only required to wait thirty
2 days. *See id.* Therefore, the Court will consider the merits of his request.

3 **II. Mr. Saldana has not demonstrated extraordinary and compelling reasons to**
4 **reduce his sentence.**

5 Mr. Saldana argues his hypertension and hyperthyroidism are an extraordinary and
6 compelling reason to reduce his sentence because they make him more susceptible to
7 COVID-19. ECF No. 97 at 3.

8 The record indicates however that Mr. Saldana's relatively minor health problems
9 are not an extraordinary and compelling reason to reduce his sentence. Mr. Saldana is in
10 his early thirties, ECF No. 67 at 2, and appears to be in good overall health, *see* ECF Nos. 67
11 ¶¶ 121–22; 105-2; 105-3. He was diagnosed with hypertension [high blood pressure] but
12 has been prescribed medication to treat it, ECF No. 105-3 at 46, which appears to be
13 working, *id.* at 6. And although Mr. Saldana has high thyroid levels, his only reported
14 symptom is cold intolerance. *Id.* at 2. When Mr. Saldana has health complaints, he is
15 seen by medical professionals who attend to his needs. *See, e.g., id.* at 16–17. Because Mr.
16 Saldana's health problems are not severe and are being treated by the BOP, they fall far
17 short of the sort of extraordinary and compelling circumstances that would warrant
18 reducing his sentence. *Cf., e.g., United States v. Hamman*, No. 3:16-CR-185-SI, 2020
19 WL 3047371, at *3, 5 (D. Or. June 8, 2020) (finding movant's hypertension,
20 hyperthyroidism, cardiomyopathy, defibrillator implant, and cardiac arrhythmia were not an
21 extraordinary and compelling reason to reduce his sentence at the height of the COVID-19
22 pandemic).

23 As for COVID-19, Mr. Saldana already contracted it in 2020 and appears to
24 have recovered well without significant complications. *See id.* at 45–47. Now that Mr.
25 Saldana has been vaccinated, *id.* at 45, he is at significantly less risk of serious infection, *see*
26 *United States v. Baeza-Vargas*, 532 F. Supp. 3d 840, 845 (D. Ariz. 2021) (collecting cases).

27 Because Mr. Saldana has not demonstrated extraordinary and compelling reasons to
28 reduce his sentence, the Motion must be denied.

III. The factors set forth in § 3553(a) weigh against Mr. Saldana's early release.

Mr. Saldana had a coordinating role in a transnational drug trafficking organization that brought pounds of methamphetamine into the community. ECF No. 62 at 5–7, ECF No. 67 ¶¶ 14–83. The Court sentenced him to the statutory minimum of ten years imprisonment a little more than four years ago. ECF No. 92 at 2. The seriousness of Mr. Saldana's crimes and the need to promote respect for the law, provide just punishment, deter criminal conduct, and protect the public all weigh against reducing Mr. Saldana's sentence. As does the applicable sentencing range. Because the § 3553(a) factors weigh against reducing Mr. Saldana's sentence, the Motion must be denied.

The Court has reviewed the file and Motion and is fully informed. Accordingly,

IT IS ORDERED that Mr. Saldana's Motion to Reduce Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A)(i), filed May 25, 2022, **ECF No. 97**, is **DENIED**.

The District Court Executive is directed to file this order and provide copies to counsel and to *pro se* Defendant.

DATED this 7th day of February, 2023.

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WM. FREMMING NIELSEN
SENIOR UNITED STATES DISTRICT JUDGE

02-03-23